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23CV21028

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

8	METRO WEST AMBULANCE	)	Case No.
9	SERVICE, INC., an Oregon corporation,	)	
		)	<b>COMPLAINT</b>
10	Plaintiff,	)	<b>(Breach of Contract)</b>
		)	
11	v.	)	Prayer: \$325,000
		)	
12	ENDURANCE AMERICAN	)	Fee Authority: ORS 21.160(1)(c)
13	INSURANCE COMPANY, a Delaware	)	
	corporation,	)	NOT SUBJECT TO MANDATORY
14		)	ARBITRATION
	Defendant.	)	
15	_____	)	JURY TRIAL REQUESTED

### COMPLAINT

For its complaint against Defendant Endurance American Insurance Company (“Endurance” or “Defendant”), Plaintiff Metro West Ambulance Service, Inc. (“Metro West” or “Plaintiff”) alleges as follows:

#### *Nature of Complaint*

1.

Metro West suffered physical damage to the insured 1980 Piper PA-60-601P, N601NG (“N601NG Aircraft”) during a landing on July 12, 2022, at Scappoose Airport, OR. Metro West made a claim to Endurance under its aviation policy for damage sustained. Endurance denied the claim.

*Parties, Jurisdiction, and Venue*

2.

Metro West is an Oregon corporation.

3.

Upon information and belief, Endurance was at all relevant times an insurer incorporated under the laws of Delaware, with its principal place of business in New York. Endurance is authorized to do, and was at all relevant times doing, business in Oregon.

4.

This Court has personal jurisdiction over Endurance pursuant to ORCP 4. Upon information and belief, at all relevant times, Endurance transacted insurance in Oregon within the meaning of the Oregon Insurance Code, ORS 731.146, and claims giving rise to this lawsuit arose out of promises by Endurance to provide coverage for persons, property, and/or risks located within Oregon.

5.

Venue is proper in this Court under ORS 14.080 *et seq.* Upon information and belief, Endurance has at all relevant times conducted regular, sustained business in Multnomah County.

*The Policy*

6.

Endurance issued Metro West an insurance policy effective from April 10, 2022, to April 10, 2023, bearing policy number NAB6046690 (the “Policy”).

7.

“Coverage F” of the Policy provides “**Physical Damage Coverage**” on an “All Risk Basis,” such that “[Endurance] will pay for any **Physical Damage** to or loss of the **Aircraft**, including **Disappearance** of the **Aircraft**” up to a \$325,000.00 limit of liability. The N601NG Aircraft is a scheduled “**Aircraft**” under the Policy.

1 8.

2 The Policy provides that “**Physical Damage** means direct and accidental physical loss  
3 of or damage to the **Aircraft**, hereinafter called loss, but does not include loss of use or any  
4 residual depreciation in value, if any, after repairs have been made.”

5 9.

6 As modified by endorsement, the Policy further provides:

7 “PILOTS: When in flight the aircraft will be piloted only by the following pilots,  
8 provided each has a valid pilot’s certificate including a current and valid medical  
9 certificate appropriate for the flight and aircraft insured. The term Medical  
10 Certificate is defined as any valid First-Class, Second-Class, Third-Class, or  
11 BasicMed compliance. All medical certificates must be appropriate for the  
intended flight and in compliance with the FAA’s Codes of Federal Regulations.  
Pilots operating under BasicMed must be able to provide documentation that  
demonstrates complete compliance.

12 As Endorsed.

13 \* \* \*

14 It is hereby understood and agreed that Pilots as shown in Item 6 of the Policy  
15 Declaration is completed to read as follows:

16 **ITEM 6.**

17 All flight hours and training used to satisfy the Pilot Warranties below must have  
18 occurred in the same aircraft category and class as the aircraft shown in the  
19 Declarations. For the purpose of this section, the terms ‘category’ and ‘class’ are  
20 as defined in the Code of Federal Regulations, Title 14, Chapter I, Part 1, Section  
1.1 (14CFR1.1):

21 Gene Frye and JD Fuiten, who must successfully complete an Instrument  
22 Proficiency check ride in the make and model within 12 months preceding the  
intended flight.

23 Otherwise, any Commercial Pilot with multi-engine land and instrument ratings  
24 having 2,000 hours total time, 1,000 hours multi-engine land, 100 hours in the  
25 make and model and who must successfully complete an Instrument Proficiency  
26 check ride in the make and model within 12 months preceding the intended  
flight.”

10.

In applying for the Policy, Metro West had disclosed to Endurance the “latest recurring training” of its two pilots, James Fuiten and Gene Frye. For both pilots, Metro West listed “CE-550” under “Make & Model” and “61.58” under “Type of Training.” At the time Metro West submitted this application, it was insured by Endurance under a prior policy providing identical coverage. The Policy is a renewal of that prior policy.

*The Loss*

11.

On July 12, 2022, Metro West suffered “**Physical Damage**” to its “**Aircraft**” resulting from a gear-up landing, which caused severe damage to the underside and propellers on the N601NG Aircraft (“the Loss”). The cost to repair the “**Physical Damage**” exceeds the insured value of the N601NG Aircraft.

12.

Following the Loss, Metro West made a claim to Endurance under the Policy, to which Endurance assigned claim number 10566911 (“the Claim”).

*Endurance’s Denials*

13.

On September 26, 2022, Metro West received a letter from Endurance denying the Claim on the grounds that Endurance “the pilot did not meet the pilot warranty requirement under the Policy.”

14.

Endurance also concluded in its September 26, 2022, letter that “[o]n the basis of the information obtained by the investigation, [Endurance] has determined that the evidence indicates that Gene Frye did not successfully complete an Instrument Proficiency check ride, in accordance with FAR 61.57, in the make and model within 12 months preceding the flight wherein the loss occurred. The pilot reported and provided documentation indicating his

1 training received was a Pilot Proficiency check pursuant to FAR 61.58, which was completed  
2 in a Cessna Citation 550, for which the flight instructor proctoring the check advises did not  
3 include an Instrument Proficiency check.” (Emphasis added.) When Endurance wrote the  
4 Policy and accepted Metro West’s premium payment, Endurance already knew that Mr. Frye’s  
5 training was completed pursuant to FAR 61.58 and in a Cessna Citation 550.

6 15.

7 Metro West thereafter challenged Endurance’s denial of coverage in a letter dated  
8 March 3, 2023.

9 16.

10 On April 13, 2023, Endurance denied the Claim again.

11 **FIRST CLAIM FOR RELIEF**

12 (Breach of Contract)

13 *Count 1*

14 17.

15 Metro West realleges and incorporates as though set forth fully herein the allegations in  
16 paragraphs 1–16, above.

17 18.

18 The Policy covers “the Loss” and the “**Physical Damage**” and obligates Endurance to  
19 pay Metro West for the Claim.

20 19.

21 Metro West fully performed, substantially complied with and/or satisfied all obligations  
22 and conditions set forth in the Policy, except any that were waived and/or excused by  
23 Endurance, or as to which performance was prevented or no longer required due to  
24 Endurance’s conduct.

25 ///

26 ///

20.

Endurance is also estopped from relying on any noncompliance with Item 6. To the extent Metro West somehow did not comply and/or substantially comply with any obligations under Item 6 of the Policy, Endurance knew when it renewed the Policy that Mr. Frye's training was performed pursuant to FAR 61.58 rather than FAR 61.57. In light of this awareness, Endurance's continuing to insure Metro West under the prior policy following Metro West's application issuance and renewal of that prior policy without discussion amounted to a representation that Mr. Frye's training satisfied any obligation under Item 6 of the Policy. Metro West reasonably relied upon that representation in purchasing the Policy, in flying the N601NG Aircraft, and in not requiring Mr. Frye to complete additional training.

21.

Endurance breached the Policy by denying coverage for the Claim and the Loss and by refusing to pay for amounts owed under the Policy, including, but not limited to, for the "Physical Damage" to the N601NG Aircraft.

22.

As a foreseeable and direct consequence of Endurance's breach, Metro West has sustained, and continues to sustain, substantial actual damages, consequential damages, and out-of-pocket expenses, including, but not limited to, the coverage owed under the Policy. These damages total an amount to be determined at trial, but not less than \$325,000.

23.

Pursuant to ORS 742.061, Metro West is entitled to an award for its attorneys' fees, costs, and disbursements incurred as a result of Endurance's denials and in bringing this action. Pursuant to ORS 82.010, Metro West is also entitled to prejudgment interest at 9% *per annum* on all of its damages from the date incurred until the date judgment is entered.

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*Count 2*

24.

Metro West realleges and incorporates as though set forth fully herein the allegations in paragraphs 1–23, above.

25.

The Policy contains an implied covenant of good faith and fair dealing that obligates Endurance to act in good faith in handling any claim made by its insured and to refrain from taking any actions that interfere with Metro West’s right to enjoy the full benefits provided by the Policy and the law.

26.

Endurance’s claims handling, as alleged above, constitutes a breach of its contractual duty to act in good faith and deal fairly with its insured, including, but not limited to, in applying unreasonable and arbitrary interpretations of Policy to deny the Claim.

27.

Metro West has fully performed and/or satisfied all obligations and conditions precedent required by the Policy, except any that were waived and/or excused by Endurance, or as to which performance was prevented or no longer required due to Endurance’s conduct.

28.

As a foreseeable and direct consequence of Endurance’s breach, Metro West has sustained, and continues to sustain, substantial actual damages, consequential damages, and out-of-pocket expenses, including, but not limited to, attorney fees spent dealing with Endurance’s unreasonable interpretations and pursuing the recovery to which Metro West is entitled. These damages total an amount to be determined at trial.

29.

Pursuant to ORS 742.061, Metro West is entitled to an award for its attorneys’ fees, costs, and disbursements incurred as a result of Endurance’s denials and in bringing this action.

Pursuant to ORS 82.010, Metro West is also entitled to prejudgment interest at 9% *per annum* on all of its damages from the date incurred until the date judgment is entered.

30.

Metro West demands trial by jury in this action.

**WHEREFORE**, Metro West prays for judgment as follows:

1. On Count 1 of Metro West's First Claim for Relief: an award in favor of Metro West and against Endurance in an amount to be determined at trial, but not less than \$325,000, plus prejudgment interest at 9% *per annum*; costs, disbursements, and attorney fees incurred herein and as a result of Endurance's denial; and such other relief as the Court may deem just and proper; and

2. On Count 2 of Metro West's First Claim for Relief: an award in favor of Metro West and against Endurance in an amount to be determined a trial, plus prejudgment interest at 9% *per annum*; costs, disbursements, and attorney fees incurred herein and as a result of Endurance's denial; and such other relief as the Court may deem just and proper.

DATED: May 24, 2023.

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